

ORIGINAL

MARK JOSEPH KENNEY (State Bar No. 87345)

MARK I. WRAIGHT (State Bar No. 228303)

SEVERSON & WERSON

A Professional Corporation

One Embarcadero Center, Suite 2600

San Francisco, CA 94111

Telephone: (415) 398-3344

Facsimile: (415) 956-0439

mjk@severson.com

miw@severson.com

Attorneys for Defendant

BANK OF AMERICA, N.A.

07 JUL 31 PM 3:28

EDWARD J. WILKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA PACIFIC BANK, a  
California banking corporation,

Plaintiff,

vs.

BANK OF AMERICA, N.A., and  
DOES 1-20, inclusive,

Defendants.

Case No.: C07-03330 JCS

**DECLARATION OF MARK  
WRAIGHT, ESQ. IN SUPPORT  
OF MOTION FOR  
ADMINISTRATIVE RELIEF TO  
EXTEND TIME TO ANSWER OR  
OTHERWISE RESPOND TO  
COMPLAINT**

I, Mark Wraight, declare as follows:

1. I am an attorney with the law firm of Severson & Werson, local counsel for Bank of America, N.A., defendant in the above-captioned action. I am licensed to practice in the State of California.

2. This declaration is submitted in support of Bank of America's Motion for Administrative Relief to Extend Time to Answer or Otherwise Respond to Complaint.

3. Bank of America's motion is based on good cause and should be granted for the reasons set forth below.

1           4. I am informed and believe that plaintiff California Pacific Bank served  
2 Bank of America's registered agent for service of process on July 5, 2007. I am  
3 also informed and believe that the copy of the complaint served was incomplete  
4 insofar as it contained only the first two pages of the complaint.

5           5. I am informed and believe that eleven days later, on July 16, 2007,  
6 plaintiff hand delivered a complete copy of the complaint to Bank of America.  
7 Attached hereto as Exhibit 1 is a true and correct copy of a letter from plaintiff's  
8 counsel indicating that he provided Bank of America with a second copy of the  
9 complaint and related documents. Exhibit 1 contains a stamp indicating that it was  
10 received by Bank of America's legal department on July 16, 2007.

11           6. On July 25, 2007, Mark Kenny, Esq., a partner of Severson & Werson,  
12 contacted plaintiff's counsel, Mr. Leo M. LaRocca, to request a short, two-week  
13 extension. Attached hereto as Exhibit 2 is a true and correct copy of a letter from  
14 plaintiff's counsel, Leo M. LaRocca, confirming his conversation with Mr. Kenney.

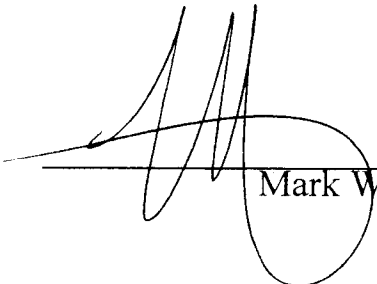
15           7. On July 25, 2007, I also contacted Mr. LaRocca. I called to follow-up  
16 and determine whether his client had consented to Bank of America's request for a  
17 short extension. Mr. LaRocca informed me that he had not heard back from his  
18 client. However, in anticipation of his client's consent, we agreed that I would draft  
19 a stipulation. Attached hereto as Exhibit 3 is a true and correct copy of the  
20 stipulation that I prepared and sent via facsimile to Mr. LaRocca.

21           8. Five days later, on July 30, 2007, Mr. LaRocca sent a letter explaining  
22 that regrettably, his client would not agree to the two week extension. Attached  
23 hereto as Exhibit 4 is a true and correct copy of the July 30, 2007 letter I received  
24 from Mr. LaRocca.

25           9. Attached hereto as Exhibit 5 is a true and correct copy of the  
26 temporary injunction entered against Bank of America by the Circuit Court Judge  
27 in Florida on June 4, 2007, at 11:00 PM.

28 ///

1 I declare under penalty of perjury under the laws of the United States that the  
2 foregoing is true and correct. This declaration is executed on July 31, 2007 at  
3 San Francisco, California.  
4

5   
6 Mark Wraight  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the City of San Francisco, California; my business address is Severson & Werson, One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

On the date below I served a copy, with all exhibits, of the following document(s):

**DECLARATION OF MARK WRAIGHT, ESQ. IN SUPPORT OF  
MOTION FOR ADMINISTRATIVE RELIEF TO EXTEND TIME TO  
ANSWER OR OTHERWISE RESPOND TO COMPLAINT**

on all interested parties in said case addressed as follows:

Leo. M LaRocca  
Niven & Smith  
425 California Street, 15th Floor  
San Francisco, CA 94104-2118

☐ **(BY MAIL)** By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in San Francisco, California in sealed envelopes with postage fully prepaid.

☒ **(BY HAND)** By placing the documents in an envelope or package addressed to the persons listed above and providing them to a professional messenger service for delivery.

☐ **(BY (1) FEDERAL EXPRESS OR (2) EXPRESS MAIL)**

(1) By depositing copies of the above documents in a box or other facility regularly maintained by Federal Express with delivery fees paid or provided for; or

(2) By placing the above documents in the United States mail for Express Mail delivery at One Embarcadero Center, Suite 2600, San Francisco, CA 94111, in a sealed envelope addressed as above, with Express Mail postage thereon fully prepaid.

☐ **(BY FAX)** By use of facsimile machine telephone number (415) 956-0439, I faxed a true copy to the addressee(s) listed above at the facsimile number(s) noted after the party's address. The transmission was reported as complete and without error. The attached transmission report, which sets forth the date and time for the transmission, was properly issued by the transmitting facsimile machine.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration is executed in San Francisco, California, on July 31, 2007.

  
Valerie Stevenson

# EXHIBIT 1

JAMES H. NIVEN  
STANLEY W. SMITH  
JOHN W. BASSETT  
LEO M. LAROCCA

NIVEN & SMITH  
ATTORNEYS AT LAW  
425 CALIFORNIA STREET, 15TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94104-2118

TELEPHONE  
(415) 981-5451  
TELECOPIER  
(415) 433-5439  
EMAIL  
law@niven-smith.com

July 13, 2007

VIA HAND-DELIVERY

Bank of America  
555 California Street  
San Francisco, CA 94111

Attention: Lydia, Legal Department

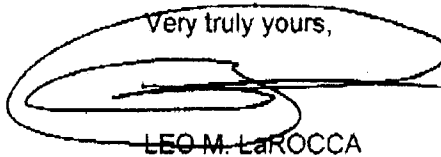
Re: California Pacific Bank v. Bank of America, et al.  
USDC, Northern District, Docket No. C07-3330

Dear Lydia:

In follow-up of our most recent telephone conversation, you requested that I provide you with yet another package of documents that were previously served upon CT Corporation, the Agent For Service of Process for Bank of America. In that regard, accompanying this letter is a copy of the Summons; Complaint; Order Setting Initial Case Management Conference and ADR Deadlines; Notice of Rule Discontinuing Service By Mail; Standing Order for Joseph C. Spero, United States Magistrate; ECF Registration Information Handout; Notice of Assignment of Case To A United States Magistrate Judge For Trial; copy of the Consent To Proceed Before A United States Magistrate Judge; the Declination To Proceed Before A Magistrate Judge; and United States District Court guidelines.

If you have further questions regarding this matter, please feel free to contact me.

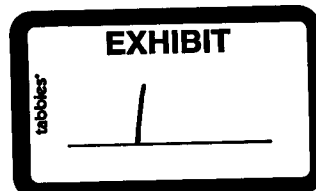
Very truly yours,



LEO M. LAROCCA

LML:ww  
Enclosures  
J:\California Pac Bank\Letters\Bank of America.0713.07.doc

Confusion 2 WTS



LEGAL DEPARTMENT  
RECEIVED  
JUL 16 2007  
S.F. HEADQUARTERS  
BANK OF AMERICA, N.A.

# **EXHIBIT 2**

JAMES H. NIVEN  
STANLEY W. SMITH  
JOHN W. BASSETT  
LEO M. LARocca

NIVEN & SMITH  
ATTORNEYS AT LAW  
425 CALIFORNIA STREET, 15TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94104-2118

TELEPHONE  
(415) 981-5431  
TELECOPIER  
(415) 433-5439  
EMAIL  
law@niven-smith.com

July 25, 2007

VIA FACSIMILE (415) 956-0439 AND MAIL

Mark Kenney, Esq.  
Severson & Wersen  
One Embarcadero Center, 26<sup>TH</sup> Floor  
San Francisco, CA 94111

Re: California Pacific Bank v. Bank of America, et al.  
USDC, Northern District, Docket No. C07-3330

Dear Mr. Kenney:

I am writing to confirm our conversation on this date, wherein I represented to you that California Pacific Bank will not take the default of Bank of America pending securing from my client consent to your request for a two (2) week extension regarding filing a response to the Complaint filed in the above-referenced action. I expect to hear from my client this afternoon to secure his consent to the continuance.

If you have any question regarding these matters, please feel free to contact me.

Very truly yours,

  
LEO M. LaROCCA

LML:ww

J:\California Pac Bank\Letters\Kenney.0725.07.doc



10597.42



# EXHIBIT 3

\*\*\*\*\*  
\*\*\* TX REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

TX/RX NO 1137  
RECIPIENT ADDRESS 9070#0000000000#4335439#  
DESTINATION ID  
ST. TIME 07/25 13:37  
TIME USE 00'23  
PAGES SENT 3  
RESULT OK

Mark I. Wraight  
Attorney  
Direct Line: (415) 677-5630  
miw@severson.com

**Severson  
& Werson**  
A Professional Corporation

One Embarcadero Center, Suite 2600  
San Francisco, CA 94111  
Telephone: (415) 398-3344  
Facsimile: (415) 956-0439

### FACSIMILE TRANSMISSION COVER SHEET

IF YOU DO NOT RECEIVE 2 PAGE(S) (INCLUDING COVER SHEET)  
PLEASE CALL Mark I. Wraight AT THE NUMBER LISTED ABOVE.

DATE: July 25, 2007

TIME: 1:29 p.m.

Sent By:

TO: Leo M. LaRocca

FAX #  
415-433-5439

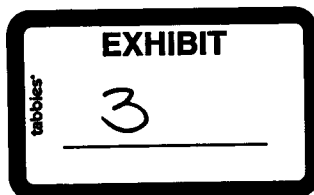
PHONE #  
415-981-5451

FROM: Mark I. Wraight

RE: California Pacific Bank v. Bank of America, Case No. C07-3330

CLIENT NAME/NUMBER:  
SENDER'S ID NUMBER:

MESSAGE:



**Severson  
& Werson**  
A Professional Corporation

Mark I. Wraight  
Attorney  
Direct Line: (415) 677-5630  
miw@severson.com

One Embarcadero Center, Suite 2600  
San Francisco, CA 94111  
Telephone: (415) 398-3344  
Facsimile: (415) 956-0439

**FACSIMILE TRANSMISSION COVER SHEET**

IF YOU DO NOT RECEIVE 2 PAGE(S) (INCLUDING COVER SHEET)  
PLEASE CALL Mark I. Wraight AT THE NUMBER LISTED ABOVE.

DATE: July 25, 2007

TIME: 1:29 p.m.

Sent By:

TO: Leo M. LaRocca

FAX #  
415-433-5439

PHONE #  
415-981-5451

FROM: Mark I. Wraight

RE: California Pacific Bank v. Bank of America, Case No. C07-3330

**CLIENT NAME/NUMBER:**

**SENDER'S ID NUMBER:**

MESSAGE:

The information contained in this facsimile message is ATTORNEY/CLIENT PRIVILEGED AND CONFIDENTIAL INFORMATION intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via mail. Thank you.

1 MARK JOSEPH KENNEY (State Bar No. 87345)  
2 MARK I. WRIGHT (State Bar No. 228303)  
3 SEVERSON & WERSON  
4 A Professional Corporation  
5 One Embarcadero Center, Suite 2600  
6 San Francisco, CA 94111  
7 Telephone: (415) 398-3344  
8 Facsimile: (415) 956-0439  
9 mjk@severson.com  
10 miw@severson.com

11 Attorneys for Defendant  
12 BANK OF AMERICA, N.A.

13 UNITED STATES DISTRICT COURT  
14  
15 NORTHERN DISTRICT OF CALIFORNIA

16 CALIFORNIA PACIFIC BANK, a California  
17 banking corporation,

18 Plaintiff,

19 vs.

20 BANK OF AMERICA, N.A., and DOES 1-20,  
21 inclusive,

22 Defendants.

Case No.: C07-03330 JCS

**STIPULATION TO EXTEND TIME TO  
ANSWER OR OTHERWISE RESPOND  
TO COMPLAINT**

23 Plaintiffs California Pacific Bank, and Defendant Bank of America, through their  
24 respective undersigned counsel of record, hereby stipulate and agree as follows:

25 ///

26 ///

27 ///

28 ///

///

///

///

///

1 The date by which Bank of America must answer or otherwise respond to the initial  
2 complaint in the above-captioned matter shall be extended to August 8, 2007.

3 DATED: July 25, 2007

SEVERSON & WERSON  
A Professional Corporation

4  
5  
6 By: 

Mark I. Wright

7 Attorneys for Defendant  
8 BANK OF AMERICA, N.A.

9 DATED: July \_\_\_\_\_, 2007

NIVEN & SMITH

10  
11  
12 By: \_\_\_\_\_

LEO M. LaROCCA

13 Attorneys for Plaintiff  
14 CALIFORNIA PACIFIC BANK  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT 4**

25-18

JAMES H. NIVEN  
STANLEY W. SMITH  
JOHN W. BASSETT  
LEO M. LARocca

NIVEN & SMITH  
ATTORNEYS AT LAW  
425 CALIFORNIA STREET, 15TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94104-2118

TELEPHONE  
(415) 961-5439  
TELECOPIER  
(415) 433-5439  
EMAIL  
law@nivenandsmith.com

July 30, 2007

VIA FACSIMILE (415) 956-0439 AND MAIL

Mark Kenney, Esq.  
Severson & Wersen  
One Embarcadero Center, 26<sup>TH</sup> Floor  
San Francisco, CA 94111

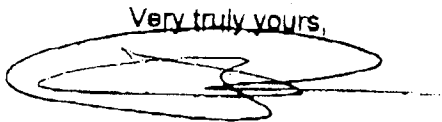
Re: California Pacific Bank v. Bank of America, et al.  
USDC, Northern District, Docket No. C07-3330

Dear Mr. Kenney:

I am writing regarding your request for the two-week continuance in the above-referenced matter. Regrettably, my client has not authorized me to agree to such a continuance. Even so, please be advised that this office will not take the default of Bank of America in the above-captioned matter. It would be appreciated if you could file your responsive pleading as soon as you are able to do so.

If you have any questions regarding these matters, please feel free to call me.

Very truly yours,



LEO M. LARocca

LML:ww

J:\California Pac Bank\LitersKenney.0730.07.doc

EXHIBIT

4

tabbles

# **EXHIBIT 5**



IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA  
CIVIL DIVISION

BULLARD ELECTRONICS, LLC

Plaintiff,

vs.

BANK OF AMERICA, N.A., and  
CALIFORNIA PACIFIC BANK,

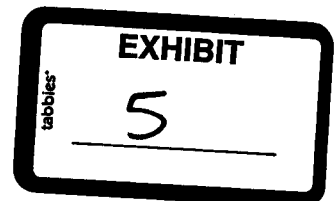
Defendants.

UCN: 522007CA00547XLC1C1  
REF: 07-5147-C1-13

**EX PARTE TEMPORARY INJUNCTION ORDER**

This cause came before the Court on Plaintiff Bullard Electronics, LLC' ("Bullard"), Motion For Ex Parte Temporary Injunction Without Notice. The Court has determined, based on the Verified Complaint for Temporary and Permanent Injunctive Relief and the Affidavit of Gregory Morris attached to it, that Bullard has complied with the Requirements of Rule 1.610 and based on those papers finds, for purposes of this order, that the verified pleading and affidavit establish that:

1. On or about April 9, 2007, Bank of America unilaterally purported to issue an amendment to a March 30, 2007, letter of credit it had issued to California Pacific Bank. Bullard protested such amendment.
2. On or about May 31, 2007, Bank of America informed Bullard that California Pacific Bank had made a demand to draw the full amount out of the March 30, 2007, letter of credit by virtue of the purported April 9, 2007 amendment to it.
3. The conditions of the March 30, 2007, letter of credit and purported April 9, 2007 amendment thereto have never been satisfied or fulfilled.
4. The purported April 9, 2007 amendment was procured by material fraud.



5. The original March 30, 2007, letter of credit was procured by material fraud.

6. Bullard will suffer immediate and irreparable injury if the court does not temporarily enjoin California Pacific Bank's attempt to draw on the letter of credit before Bank of America and California Pacific Bank can be heard in opposition.

7. Bullard has demonstrated a substantial likelihood of success on the merits of this action.

8. Bullard is prepared to post a cash bond in the registry of the court in an amount to be determined by the Court, which Bullard believes should not exceed \$25,000.

9. The injury which Bullard will suffer, if Bank of America is not temporarily enjoined is the complete loss of the collateral it posted for the Letter of Credit and the complete inability to recoup the same from Qibee, Inc., which is a party who is not located at the address to which it is registered as a California corporation, and which has evidently secreted itself in a way to not make it readily subject to being served with process. In addition, allowing the draw to occur would facilitate a material fraud.

10. This order is being entered without notice because Bank of America has only a reasonable time under Florida Statute §675.108(2) (2006) following presentment on a letter of credit to honor a draw and because Bank of America informed Bullard that it would need to be enjoined in order to not honor the demand.

Accordingly, it is HEREBY ORDERED AND ADJUDGED as follows:

A. Bank of America, N.A., hereby is temporarily enjoined, until further order of Court, from honoring any demand made for payment of all or any part of its Letter of Credit No. 68017913 in the amount of \$412,080; abd

B. This order is conditioned upon the posting by Bullard in the registry of the Court of a cash bond in the amount of \$ 25,000 to protect Defendants against damages that may be suffered if this injunction is wrongfully entered.

Original Signed

DONE and ENTERED this 4<sup>th</sup> day of June, 2007 at 11:00 o'clock a.m.

JUN 04 2007

MARK I. SHAMES  
Circuit Judge

Circuit Court Judge  
MARK I. SHAMES